Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

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in the
Supreme Court of the United States

EBRAHIM A. BABAZADEH,
Petitioner

v.

FAIRFAX COUNTY BOARD OF SUPERVISORS,
Respondent

On Petition For A Writ Of Certiorari
To The Supreme Court Of the Commonwealth
Of Virginia

PETITION FOR A WRIT OF CERTIORARI

Ebrahim A. Babazadeh
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24 p

QUESTIONS PRESENTED FOR REVIEW

(1) Babazadeh is asking this high Court to look for an incorrect staff report.

(2) On the date that the decision was made Babazadeh had access to the property and the Fairfax County Board of Supervisors unreasonably denied his right. The letters from the Virginia Department of Transportation (VDOT) confirm that.

PARTIES TO THE PROCEEDING

(1) Judge Benson

(2) Gregg Russ

(3) David Stone

(4) Fairfax County Board of Supervisors

(5) David Bobzien, Esquire

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CITATIONS OF OPINIONS AND ORDERS

The judgment sought to be reviewed , i.e., the judgment of the Circuit Court of Fairfax County. Virginia, entered in *Ebrahim A. Babazadeh v. the Fairfax County Board of Supervisors*, In Chancery No. 162093, the decision of the Court being to dismiss on mootness grounds; and the judgment of the Supreme Court of Virginia, in *Ebrahim A. Babazadeh v. the Fairfax County Board of Supervisors*, Record No. 002257 from Circuit Court No. CH162093, which denied Babazadeh's petition for appeal and affirmed the lower Court without written decision.

STATEMENT OF THE BASIS FOR JURISDICTION

On January 10, 2001, the Supreme Court of Virginia denied Babazadeh's petition for appeal and affirmed the decision of the Circuit Court of Fairfax County. Babazadeh believes that his Constitutional property rights have been denied by the Fairfax County Board of Supervisors. This petition for a Writ of Certiorari has been filed in a timely manner.

STATEMENT OF THE CASE

Mr. Babazadeh filed an application for an auto dealership at 13928 Lee Highway, Centreville, Virginia, on November 12, 1996. This case was delayed continuously and Mr. Babazadeh believes it was a tactic to discourage him. The case was heard by the Fairfax County Board of Supervisors on May 18, 1998. It was rejected on the grounds that the property did not meet bulk standards 1, 4, and 5 for C-8 zoning. Babazadeh contends the property does (see Item 10, page 6). The Virginia Department of Transportation, in 1999, took a small portion of the property for a new traffic interchange, but promised Babazadeh in three separate letters that he would retain access to Lee Highway. Babazadeh also purchased the adjoining property behind the subject property, which fronted on Braddock Road. The Circuit Court did not hear the case until June 2, 2000. The Court stated that Babazadeh no longer had access to Lee Highway as he had at the time of application. (See *Ebrahim A. Babazadeh v. Fairfax*

County Board of Supervisors. Record No. 002257, in the Supreme Court of Virginia, App. 3.) Babazadeh believes he is being discriminated against because other businesses, including auto-related, have been approved in his neighborhood (See Item 2). Also, he believes that the Fairfax County Board of Supervisors is discriminating against small land owners and small business owners in favor of land development and is attempting to dictate what private land owners may do with their property (See Item 9, B-5 Suburban Center).

ASSIGNMENTS OF ERROR

(1) Does a citizen of the United States have the right to operate a business for which he has a license? Mr. Babazadeh opened his car dealership in 1989 on Irving Avenue in Arlington with less than 3000 square feet of space. He moved to a larger location at 1805 Clarendon Boulevard in Arlington, Virginia in 1991. The Clarendon Boulevard site contained less than 10,000 square feet. He remained there until 1996, when the building was sold. The same year he purchased 13928 Lee Highway, Centreville, Virginia, determined to reopen his dealership in a larger space in an area that had many auto-related businesses, including gas stations, a tire dealership and a muffler shop.

Looking at the Comprehensive Plan for Fairfax County, he saw that the Area, B-5, where his place of business is located, "contains a number of automobile-oriented commercial uses along Route 28 and Route 29. " (Fairfax County Comprehensive Plan) The Comprehensive Plan supports Mr. Babazadeh's desired use.

(2) Mr. Babazadeh believes he is being discriminated against and, in fact, he believes that Fairfax County regularly discriminates against small business in favor of large corporate interests. The County uses its Comprehensive Plan as a club to smite small landowners and business owners into selling or combining their lands in order to attract large national retailers, destroying local merchants. The Comprehensive Plan for Unit B-5 states: "Consolidation of parcels is encouraged to reduce direct access points to Route 29 and to improve traffic circulation in the vicinity." What if a landowner is unable to consolidate his land with another? Must he then give up his business?

The Fairfax County Board of Supervisors approved the following special exceptions in the same neighborhood as Babazadeh's property:
November 15, 1999 - Special Exception SE 87-Y-035 for Merchant's Incorporated - extension of time to commence construction until February 10, 1992
October 21, 1996 - Special Exception SE91-Y-034 for Mobil Oil Corporation, for a service station and

quick food store at Lee Highway and Braddock Road, originally approved in 1992, for dedication of part of Lee Highway.
December 7, 1998 - Approved Special Exception SE 98-Y-025 for S & S Development for a pharmacy with a drive-through at 5752 Pickwick Road.

(3) Doesn't a property owner have right to use his property as Comprehensive Planning permits?

(4) Can a supervisor such as Mr. Michael R. Frey reject an application because he does not like the facade of the building?

(5)This application number SE 97-Y-039 exceeds the bulk standard for C-8 zoning:
Bulk Standards:

Standard	Required	Provided
Lot Size	40,000 s.f.	1.26 acres
Lot Width	200 ft. minimum	262 ft.
Building Height	40 feet	25 feet

Front Yard	>40 ft.,min 45 degree ABP	25 ft.
Rear Yard	20 feet	200+ ft.
FAR	0.50	0.05
Open Space	15%	60%
Parking Spaces	6	11

(6) A letter from the Commonwealth of Virginia covers standard 4:
This is the body of a letter from David R. Holsinger, Assistant District Right-of-Way Manager dated May 15, 1998:

"As per your inquiry, this is to inform you that VDOT will be acquiring from the adjoining property (Parcel 030), a strip of land parallel to the proposed southbound lane Route 29 which will be utilized for a proposed frontage road. This will be your access into your remaining lands."

(7) Mr. Babazadeh first filed the application for an auto dealership at 13928 Lee Highway (parcel 54-4 (1) 57) on November 12, 1996. Since purchasing

13928 Lee Highway, he has had to pay interest ,taxes , repair ,and licenses, and fees totaling more than 300,000.00. He paid real estate taxes of $3,840.00 in 1996, $7,124.00 in 1997, and $7,101.00 in 1998, a total of $18,065.00. He did not receive the services to be expected in return; instead, he suffered many problems as a result of his dealings with the County. He had a $450,000.00 deed of trust on the property. He paid interest of $18,154.00 in 1996, $34,953.00 in 1997, and $34,185.00 in 1998, a total of $87,292.00 for his first 2 and 1/2 years of ownership. Total expenses for his first 2 and 1/2 years of ownership were $134,512.00. He received no income from the property. Since he purchased the property, lawyer's fees to date have come to $60,000.00. He paid $2380.00 for the survey.

(9) "B-5 (34 Acres) Suburban Center

"Land Unit B-5 contains a number of automobile-related commercial uses along Route 28 and Route 29 each with separate access. A full interchange for the Route 28/Route 29 intersection is planned and

this will have an impact on existing commercial uses and the access to these uses. However, neighborhood-serving retail commercial and limited office uses up to .25 FAR are planned and will remain appropriate in this land unit to serve local needs. A motel or bed and breakfast with proximity to the historic district may also be appropriate.

"Development in this area should promote the efficient functioning of intersections in the land unit. Consolidation of parcels is encouraged to reduce direct access points to Route 29 and to improve traffic circulation in the vicinity.

"Development in this land unit which occurs in proximity to Land Unit B-2 must recognize the character of the historic district and be compatible in terms of scale, layout, bulk, height, and landscaping."

(10) Please look at documents presented to this Court very carefully and judge on it. The documents presented to the Commissioner by the County

Planning Staff is inaccurate and misleading. The Planning Commission rejected the application because it claimed that numbers 1, 4, and 5 of the General Standards were not met. This is not accurate:

General Standard 1 states: "The proposed use at the specified location shall be in harmony with the adopted comprehensive plan" The comprehensive plan states that "land unit B-5 contains a number of automobile-oriented commercial uses along Route 28 and Route 29 each with separate access."

General Standard 4 states: "The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood." First, there is virtually no pedestrian traffic. Second, the Commonwealth of Virginia informed Mr. Babazadeh in two letters that he will be provided with access to his property:

This is the body of the letter from Debra J. Moore,

Land Acquisition Agent, Sr., dated April 14, 1998:

"This letter serves to confirm our conversation in my office on April 13, 1998. Access to properties located on highway projects is maintained during construction. Your parcel on this project will be treated like all others and access will be provided during construction."

This is the body of a letter to Chairman Katherine D. Hanley of the Fairfax County Board of Supervisors from Jan Vaughn, Transportation Engineer:

"I am writing this letter at the request of Mr. Ebrahim A. Babazadeh to clarify the affects (sic) of the proposed Route 28/29 Interchange improvements on his property's access.

"Please note on the attached plan sheet that the approximately 100' to the east, through a service existing entrance will be closed. However, the property will be accessed by an entrance drive, to be

constructed with the interchange project.

"The project is currently in right of way acquisition, with a scheduled advertisement for construction bids date of October 1999. Construction should begin in the spring of 2000.

"Please feel free to call me if further clarification is necessary."

Number 5 of the General Standards states: "In addition to the standards which may be set forth in this Article for a particular category or use, the Board shall require landscaping and screening in accordance with the provisions of Article 13." I have stated in every hearing that I plan to provide landscaping as required.
The application was in complete accordance with General Standards numbers 2, 3, 5, 7, and 8.

This is and excerpt from statement at a closed hearing on January 7,1998 by Mr. Koch:

"Thank you, Mr. Chairman. First of all, I would like to enter into the record a letter from Dr. and Sarah Halfond (sic), who write in support of this application. Their rationale basically is that they would prefer some use there rather than the vacant lot that's there now. I'd also like to thank the citizens who came out and spoke on this application and I'd like to express my appreciation to the applicant for presenting his case the best he could. The request for a vehicle sales establishment for used cars within an existing 2,525 square foot building and an existing parking area located on Lee Highway approximately 200 feet from its intersection with Sully Road, or Route 28. Although the application meets the bulk standards for C-8, it does not conform to the Standards 1,4, and 5 of Section 9-006 of the Zoning Ordinance, and is not in harmony with the Comprehensive Plan language that promotes the efficient functioning of intersections and encourages consolidation of parcels to reduce direct access points to Route 29 and to improve traffic circulation in the vicinity. In addition, the proposal does not address the

construction period of the ever important Route 28/29 interchange project, which we hope will begin within the next two years. In the past, we have had requests for this kind of use near the site; they were denied. The request – the West Fairfax County Citizens Association Land Use Committee and the Sully District Land Use Committee, which usually does not take stands on individual land use cases, voted unanimously against this Special Exception. Therefore, Mr. Chairman, I MOVE THAT WE RECOMMEND TO THE BOARD OF SUPERVISORS DENIAL OF SE-97-Y-039, EBRAHIM A. BABAZADEH."

Mr. Koch did not pay attention to VDOT's letters in his conclusion. This is because he followed an incorrect staff report. Also, Babazadeh promised to make any changes necessary for approval. This was disregarded in the decision of Mr. Koch.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted
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VIRGINIA

In The Circuit Court of Fairfax County

Ebrahim A. Babazadeh

Complainant.

-vs- In Chancery No. 162093

Fairfax County Board
of Supervisors

Defendant.

Fairfax, Virginia
Friday, June 2, 2000

Babazadeh, owner of commercially zoned land in Fairfax County, Virginia, applied to the Fairfax County Board of Supervisors for a special exception to permit vehicle sales, rental and ancillary service

establishment (new car sales) in his building and parking area. Fairfax County denied the application. Babazadeh sought a declaratory judgment from the Fairfax County Circuit Court that the County's decision was unreasonable, arbitrary, discriminatory and capricious and that the Board be required to grant Babazadeh's application. The County moved to dismiss on mootness grounds due to a partial take of Babazadeh's property by the Virginia Department of Transportation which occurred after the special exception application was rejected by the County, and which took part or all of the vehicular access relied upon by Babazadeh in his application so that he would have to rely on other access. Babazadeh responded that the partial take did not result in the need for substantial change in the traffic plan in the application, and that a trial was still necessary to determine whether the Board's denial of the application was unreasonable and arbitrary, and that upon remand to the Board, changes in the traffic plan could be handled by amendment to the application.

ASSIGNMENTS OF ERROR

The Judge should have, at the very least, remanded the case for a new hearing or consideration by the Board.

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the `10th of January, 2001.

Ebrahim A. Babazadeh, Appellant

against Record No. 002257
Circuit Court No. CH162093

Fairfax County Board of Supervisors Appellee.

From the Circuit Court of Fairfax County

The Supreme Court of Virginia denied Babazadeh's petition for appeal and affirmed the lower court without written decision.